

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DAVID V. MARTINEZ,

Plaintiff,

v.

CIV 15-0786 WJ/KBM

FNU ALVA et al.,

Defendants.

**PROPOSED FINDINGS RECOMMENDING DISMISSAL OF
THE COMPLAINT WITHOUT PREJUDICE**

THIS MATTER is before the Court on the pro se Plaintiff's failure to respond to the Order to Show Cause entered June 14, 2016. *Doc. 28*. In that Order, I noted that Plaintiff failed to appear at a Rule 16 Initial Scheduling Conference set for Tuesday, June 14, 2016 at 2:00 p.m. I therefore ordered Plaintiff to show cause why he failed to appear for the Scheduling Conference. I warned Plaintiff that if he failed to timely respond to the Order, I would recommend to the presiding district judge that this case be dismissed without prejudice. *See, e.g., Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 642-43(1976); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962); *see also Costello v. United States*, 365 U.S. 265, 286-87 (1961) (district court may dismiss *sua sponte* for failure to comply with order of court); *United States ex rel. Jimenez v. Health Net, Inc.*, 400 F.3d 853, 855 (10th Cir. 2005) ("dismissal is an appropriate disposition against a party who disregards court orders and fails to proceed as required by court rules.").

Plaintiff's response to the Order to Show Cause was due on June 24, 2016, but no response has been filed as of today. There is no indication that Plaintiff failed to

receive the Order. Thus, it appears that Plaintiff manifests a lack of interest in litigating this matter.

IT IS THEREFORE RECOMMENDED that this case be dismissed without prejudice.


UNITED STATES CHIEF MAGISTRATE JUDGE

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1).

A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.